

CHAPTER 38-19

GEOTHERMAL RESOURCE DEVELOPMENT REGULATION

38-19-01. Declaration of policy.

It is hereby declared to be in the public interest to encourage, and promote the proper use of geothermal resources in a manner which will prevent waste; to authorize and provide for the operation of geothermal resource extraction facilities in such manner as will achieve the optimum utilization of the geothermal resource and protect the correlative rights of all owners; to prevent contamination and pollution of surface and ground water sources; and to avoid creation of secondary hazards of a geologic nature.

38-19-02. Definitions.

As used in this chapter:

1. "Commission" means the industrial commission of North Dakota.
2. "Geothermal energy" means the internal energy of the earth, available to man as heat from rocks or liquids.
3. "Geothermal energy extraction facility" means and includes any drilled, bored, or excavated device or installation to provide for the extraction of geothermal energy.
4. "Geothermal resource" means the recoverable stored heat of the earth.
5. "Producer" means the owner of a geothermal energy extraction facility or facilities, and the owner's agents or employees.
6. "Product" means anything produced, whether usable or unusable, by means of a geothermal energy extraction facility.
7. "Waste" means and includes the locating, spacing, drilling, excavating, or operating of any geothermal energy extraction facility in a manner which causes or tends to cause reduction in the quantity or quality of geothermal energy ultimately recoverable from a geothermal resource, or which causes or tends to cause unnecessary or excessive use, or degradation, of land surface.

38-19-03. Jurisdiction of the commission.

The commission has jurisdiction and authority and is charged with the responsibility to enforce the provisions of this chapter. This chapter does not apply to any activity regulated under chapters 38-08, 38-12, 38-12.1, 38-14.1, and 61-28. The jurisdiction granted to the commission by this chapter is not exclusive and does not affect the jurisdiction of other governmental entities. The commission acting through the director of mineral resources has the authority:

1. To require:
 - a. Identification of ownership of all facilities, installations, and equipment used in the extraction of geothermal energy.
 - b. The making and filing of all logs and reports on facility location, drilling, boring, excavating, and construction and the filing, free of charge, of samples, core chips, and complete cores, when requested, in the office of the state geologist.
 - c. The drilling, boring, casing, excavating, plugging, and construction of facilities in a manner to prevent contamination and pollution of surface and ground water sources and unnecessary environmental degradation.
 - d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter and the rules and orders of the commission relating to the extraction of geothermal energy. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - e. Metering or measuring all products extracted from or by means of a facility regulated by this chapter.

- f. That every person who operates a geothermal energy extraction facility in this state shall keep and maintain complete and accurate records of the quantities and nature of products extracted from or by means of any facility, and the ultimate disposition of such products, which records must be available to the commission or its agents at all times, and that every such person file with the commission such reports as it may prescribe.
 - g. That upon termination of the operation of any facility or activity regulated by this chapter, the operator of the facility shall restore the surface as nearly as possible to its original condition and productivity.
 2. To regulate:
 - a. The drilling, boring, excavating, and construction of all geothermal energy extraction facilities.
 - b. Operations to assure the optimum performance of all facilities regulated under this chapter.
 3. To limit and prescribe the nature, quantity, and source of geothermal energy to be extracted from any facility regulated by this chapter.
 4. To adopt rules and issue orders to effectuate the purposes of this chapter.

38-19-04. Permit and report required.

It is unlawful to commence any operations for the drilling, boring, excavating, or construction of a geothermal energy extraction facility without first securing a permit from the director of mineral resources, under such rules as may be adopted by the commission and after paying to the commission a fee for each such facility in an amount to be prescribed by the commission by rule. The fee set must be related to the cost of regulation and inspection under this chapter.

A report is required upon completion of any geothermal energy extraction facility. The report must be prepared by the geothermal energy extraction facility installer on a form provided by the state geologist and must be furnished to the state geologist within thirty days after the completion of the facility. The report must contain relevant information the state geologist requires relating to the environmental safety of the facility, including the facility owner and location, a log of formations penetrated or total depth, system specifications and design, and fluids used in the facility.

All construction of geothermal energy extraction facilities must comply with rules adopted under this chapter.

38-19-05. Commission may employ examiners.

The commission may use hearing examiners under such rules as the commission may adopt.

38-19-06. Action to restrain violation or threatened violation.

Whenever it appears that any person is violating or threatening to violate any provision of this chapter, or any rule or order of the commission, the commission may bring action against that person, in the district court of the county where the violation occurs or is threatened, to restrain that person from continuing the violation or from carrying out the threat of violation. In any such action, the court has jurisdiction to issue, without the filing of a bond or other undertaking by the commission, such prohibitory and mandatory injunctions as are necessary, including temporary restraining orders, preliminary injunctions, temporary, preliminary, or final orders restraining the person from continuing the violation or from carrying out the threat of violation.

38-19-07. Penalties.

1. Any person who violates any provision of this chapter, or any rule or order of the commission adopted or issued under this chapter, is subject to a civil penalty of not more than twelve thousand five hundred dollars for each act of violation and for each day the violation continues.

2. It is a class C felony for any person, for the purpose of evading this chapter, or any rule or order of the commission, to make or cause to be made any false entry or statement in a report required by this chapter or by any rule or order adopted or issued or promulgated by the commission, or to make or cause to be made any false entry in any record, account, or memorandum required by this chapter, or by any rule or order of the commission, or to omit, or cause to be omitted, from any such record, account, or memorandum, full, true, and correct entries as required by this chapter or by any rule or order of the commission, or to remove from this state or destroy, mutilate, alter, or falsify any record, account, or memorandum.
3. The civil penalties provided in subsection 1 are recoverable by suit filed by the attorney general in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there is more than one defendant, or in the district court of any county in which the violation occurred. The payment of the penalty does not operate to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation.

38-19-08. Administrative procedure and judicial review.

Any proceedings under this chapter for the adoption or modification of rules or orders, including emergency orders relating to extraction of geothermal energy and determining compliance with rules of the commission, must be conducted in accordance with sections 38-08-11, 38-08-12, 38-08-13, and 38-08-14; and chapter 28-32 governs administrative practice when consistent with the provisions of this chapter and the above-referenced sections.

38-19-09. Disposition of unusable products.

Products for which there is no beneficial use and which the commission determines to be hazardous must be disposed of in accordance with the provisions of chapter 23-20.2 and other state laws and regulations regarding the management of hazardous waste.